

BARBARA ST. PIERRE and LYNN  
 GUILLOTTE, on behalf of themselves and all  
 others similarly situated,  
  
 Plaintiffs,  
  
 v.  
  
 CVS PHARMACY, INC., MASSACHUSETTS  
 CVS PHARMACY, L.L.C.,  
 MASSACHUSETTS CVS PHARMACY, INC.,  
 and CVS CAREMARK CORPORATION,  
  
 Defendants.

Defendants CVS Pharmacy, Inc., Massachusetts CVS Pharmacy, L.L.C., Massachusetts CVS Pharmacy, Inc., and CVS Caremark Corporation (collectively “CVS”) submit as supplemental authority the attached decision of the United States Court of Appeals for the Seventh Circuit in Allen v. City of Chicago, No. 16-1029, 2017 U.S. App. LEXIS 14230 (7th Cir. Aug. 3, 2017).

CVS cited to Allen v. City of Chicago., No. 10 C 3183, 2015 U.S. Dist. LEXIS 165906, (N.D. Ill. Dec. 10, 2015) in its Proposed Findings of Fact and Conclusions of Law, with respect to the proper standard for determining “constructive notice” of alleged off-the-clock work. Dkt. No. 121, p. 16, n.26. In Allen, following a bench trial, the district court found that even if the supervisor knew a plaintiff had performed off-duty work on his or her BlackBerry, it would be extremely impractical to force the supervisor to also verify that a time due slip was turned in for that work. Allen, 2015 U.S. Dist. LEXIS 165906, at \*56-57. In other words, constructive

knowledge attaches only if a supervisor is both aware that off-the-clock work was performed, *and* that it was not paid. In its August 3, 2017 decision, the Seventh Circuit affirmed the district court's findings in all respects. Allen, 2017 U.S. App. LEXIS 14230, at \*19-23.

Respectfully submitted,

CVS PHARMACY, INC.,  
MASSACHUSETTS CVS PHARMACY,  
L.L.C., MASSACHUSETTS CVS  
PHARMACY, INC., and CVS  
CAREMARK CORPORATION,

By their attorneys,

/s/ Douglas J. Hoffman  
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Dated: August 4, 2017

### **CERTIFICATE OF SERVICE**

This hereby certifies that on this 4th day of August 2017 a true and accurate copy of the above document was filed with the Court and served upon the attorneys listed below, via the Court's ECF system.

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